IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.3680 OF 1996

Larsen & Toubro Ltd. Plaintiffs
vs.
Bakrie Nusantara International Pte.Ltd. Defendants

Mr.F.Sayed with Mr.Sunil Tilokchandani i/b.M/s.Manilal Kher & Ambalal & Co. for the plaintiffs.

Mr.Manoj Khatri i/b.Mr.Prashant Pratap for the defendants.

CORAM : ANOOP V. MOHTA,J.

DATED : 22nd June, 2007

P.C.

In the present Suit, the prayer is to declare that there is no valid, effective and subsisting arbitration agreement between the plaintiffs and the defendants.

The Suit is pending since September 1996.

2. By an order dated 7.3.1998 in a notice of motion no.3031/1996 this Court has passed the following order:

> 1. Heard the learned counsel for the parties.
>
> 2. The merits of the notice of motion are not required to be gone into for the reason that during the pendency of the notice of motion, the plaintiffs/applicants raised the objection about the Arbitrator's jurisdiction as a preliminary issue and the arbitrator has decided the preliminary issue in favour of the

plaintiffs that he has no jurisdiction.. Against the order of arbitrator holding that he has no jurisdiction, an appeal has been preferred by the defendants and the said appeal is pending. In this background of facts, no order needs to be passed in the notice of motion taken out by the plaintiffs and interest of justice would be met if liberty is granted to the plaintiffs to take out fresh notice of motion in the event appeal board holds that the arbitrator has jurisdiction in the matter. In that event it would be open to the parties to raise all contentions available to them and same would be decided accordingly. Accordingly, notice of motion is disposed of with liberty as stated above.

3. No costs.

4. Certified copy expedited."

3. On 11th June, 2007 when this matter reached hearing,

this Court has passed the following order:

"The Suit is for declaration that there is no valid and effective arbitration agreement between the plaintiffs and the defendants. There is no ad-interim order granted in favour of the plaintiffs. As recorded in the order dated 7.3.1998 in notice of motion no.3031/1996, the plaintiffs objection about the arbitral jurisdiction as a preliminary issue was decided in his favour. Against the said order an appeal was preferred by the defendants. The said appeal at that time was also pending. The parties at present have no instructions about the decision of the said appeal. Therefore, plaintiffs seeks time to take instructions in the matter. Considering the fact that the Arbitrator has already taken a decision about its jurisdiction based on the arbitration agreement between the parties, and the same is under challenge and is subject matter of the appeal, I am of the opinion that even otherwise, the plaintiffs are not entitled to press this issue again in the present Suit. Two parallel proceedings are impermissible for the same challenge. The

present Suit is therefore adjourned for disposal. S. O. for one week for disposal."

4. The learned counsel appearing for the plaintiffs seeks to rely on **ITC Limited vs. Holbud Limited & ors., 1998(3) Mh.L.J. 267** and contended that the arbitration proceedings invoked by the defendant under rules of GAFTA were without jurisdiction and, therefore, the plaintiffs cannot be compelled to participate in the arbitration proceedings. Admittedly, there is no information to both the parties about the proceedings, if any, still pending as reflected in the order dated 7.3.1998.

5. Having once agitated the issue about the existence of the valid and binding arbitration agreement and the same is pending and or adjudicated once and now appeal is still pending, for the same purpose and for the same dispute, the plaintiffs cannot allowed to reagitate the matter as filed and pending before this Court through the present Suit. The plaintiffs remedies available after the decision on the issue about the existence of valid and binding arbitration agreement, are still open.

6. In view of this, the judgement as relied (ITC Limited) in no way affects the submission as raised by the learned advocate for the defendants that the party

cannot reagitate the issue by this Suit. Even otherwise the facts and circumstances in that case were totally different and distinguishable.

7. In view of this, the present Suit is dismissed as not maintainable. However, liberty is granted to the plaintiffs to continue to agitate the issue which is pending before the appropriate authority. The Suit is disposed of accordingly as not maintainable.

[ANOOP V. MOHTA,J.]